

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8068 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
Nos. 1 to 5 No.

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ISAMIL MUNNABHAI SHAIKH

Versus

STATE OF GUJARAT

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Appearance:

MS JAYSHREE C BHATT for Petitioner

MR.NEEGAM SHUKLA ,AGP for Respondents.

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 04/11/96

ORAL JUDGEMENT

This Special Civil Application is directed against the order dated 10.4.1996 passed by the Police Commissioner, Ahmedabad City whereby the petitioner has been detained under the provisions of Gujarat Prevention of Antisocial Activities Act, 1985. The detention order was executed on 10.4.1996 itself and since then the petitioner is under detention lodged at Porbandar Jail, District Junagadh.

The present Special Civil Application was filed on 22.10.1996 and on 23.10.1996 Rule returnable was issued, sofar neither any reply has been filed nor any affidavit of the Detaining Authority has been filed.

The grounds enclosed with the detention order show that there were two criminal cases registered against the petitioner for the offences under IPC i.e.135/95 & 362/95. In both the matters the police investigation was going on at the time of the passing of the detention order. Besides the allegations in two criminal cases, the Detaining Authority has also taken into consideration the statements of the witnesses with regard to the incident dated 9.3.1996 and 17.3.1996. For the reasons of security of the witnesses on their request the provision of section 9(2) of PASA Act has also been invoked. The Detaining Authority opined that the petitioner is dangerous person in the area. It has also been noticed that the proceedings of externment may not be sufficient to prevent the petitioner from continuing his antisocial and criminal activities. Accordingly the detention order has been passed.

The detention has been challenged on more than one grounds but the learned counsel for the petitioner has laid stress on the argument that it is not the case of breach of public order and he has placed reliance on Mustak Miya's case reported in 1995(2) GLR Pg.1268.

I find that the law laid down in Mustak Miya's case (Supra) applies with full balance on the facts of the present case. The detention order is not based on material and allegations which can be said to be relevant to the breach of public order. It is at the most a case of law and order and therefore the detention order deserves to be set aside on this ground alone.

Accordingly, this Special Civil Application is allowed. The impugned order of detention dated 10.4.1996 passed by the Police Commissioner, Ahmedabad City is hereby quashed and set aside. The petitioner's detention is declared to be illegal. The respondents are directed to release the petitioner and set him at liberty forthwith if not required in any other case. Rule is made absolute.

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